

STATE OF MINNESOTA
COUNTY OF LYON

IN DISTRICT COURT
FIFTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

File No. 42-CR-08-220

vs.

OLGA MARINA FRANCO DEL CID,

ORDER

Defendant.

The above-entitled matter came before this Court on June 27, 2008 for a Hearing. Defendant was represented by Manuel Guerrero, Attorney at Law, St. Paul, Minnesota and Neal Eisenbraun, Attorney at Law, New Brighton, Minnesota. The State appeared through Rick Maes, Lyon County Attorney.

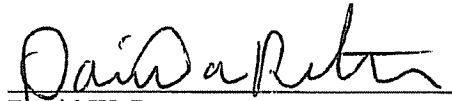
Based upon all the files and records herein,

IT IS HEREBY ORDERED:

1. Defendant's Motion to Transfer Venue is DENIED. Venue of the above-entitled matter shall remain in Kandiyohi County.

Dated: July 8, 2008

BY THE COURT:



David W. Peterson
Judge of District Court

MEMORANDUM

Defendant has been charged in the Amended Complaint with four counts of Criminal Vehicular Homicide, in violation of Minn. Stat. § 609.21, Subd. 1(1), seventeen counts of Criminal Vehicular Injury, in violation of Minn. Stat. § 609.21, Subd. 1(1), one count of False Name and Date of Birth to a Peace Officer, in violation of Minn. Stat. § 609.506, Subd. 2, one count of Stop Sign Violation, in violation of Minn. Stat. § 169.20, Subd. 3(a), and one count of

No Minnesota Driver's License, in violation of Minn. Stat. § 171.02, Subd. 1. By this Court's June 11, 2008 Order ("Order") this Court granted Defendant's Motion for Change of Venue and transferred venue to Kandiyohi County. Defendant has filed a Motion requesting a transfer of venue to yet another county.

This Court has "wide discretion" regarding a change of venue. State v. Salas, 306 N.W.2d 832, 835 (Minn. 1981) (citing State v. Thompson, 123 N.W.2d 378, 380 (Minn. 1963) (per curiam) ("Thompson I"). "Ordinarily it is not permissible for a defendant, on a motion for change of venue, to select the county to which the venue should be changed." Thompson I, 123 N.W.2d at 382. Defendant acknowledges that the choice of new venue is in the discretion of the Court.

When this Court granted the change of venue, this Court specifically concluded that the grounds of prejudicial publicity in Rule 24.03, Subd. 1d and Rule 25.02 did not provide the basis for the change of venue. This Court noted that the news accounts have appeared fair and state-wide, that most persons can distinguish news accounts from opinions in blogs or letters to the editor, that blogs are also accessible state-wide, and that this Court has had experience with pre-trial publicity cases where jurors have been able to set aside news accounts. (Order, p. 3.) While some of the publicity has been generated in Kandiyohi County, particularly internet postings and blogs, the Court does not find this a sufficient basis to grant another change of venue.

The analysis of pre-trial publicity focuses, appropriately, on the places the publicity is disseminated, not on the place of its origin. It is a long-standing proposition of law that if prejudicial publicity extends throughout the entire state, a trial court is not required to change venue. State v. Blom, 682 N.W.2d 578, 607-08 (Minn. 2004) (citing Thompson v. State, 183 N.W.2d 771, 772 (Minn. 1971) ("Thompson II").

The rationale of Blom is applicable here. Blom moved for the first change of venue from Carlton County, arguing that because of local publicity and involvement in the case by so many residents, it would be difficult to find fair and impartial jurors. Blom, 682 N.W.2d at 595. Venue was changed to Saint Louis County; the Carlton County Courthouse was roughly 65 miles from the new venue. Id. The trial court noted that the new venue would be convenient to the parties and yet free from the significant community involvement in Carlton County. Id. The defendant re-raised the issue of venue and the trial court reevaluated the issue as new jurors were seated. However, the trial court, and the Supreme Court, noted that “nowhere in the state would Blom face a jury unexposed to publicity about the case.” Id. at 608. The jurors ultimately selected “were individually and extensively questioned by the district court and counsel for both sides,” and the record “indicated that they intended to reach their verdict solely on the basis of evidence.” Id. The jurors selected had been exposed to publicity, but they agreed to follow the court’s instructions and agreed to be fair and impartial. Id.

Like in Blom, this Court changed venue from Lyon County on the basis of the community involvement and closeness with the case. Also like in Blom, this Court changed that venue to a county nearby: “sufficiently distant [...] to provide the detachment necessary, and yet close enough so that the many family and friends interested can conveniently attend the trial.” (Order, p. 6.) Based upon the record at this time, the Court has every reason to believe that, while many potential jurors will likely have been exposed to pre-trial publicity, that would be true in any county in Minnesota. The record does not show that “the dissemination of potentially prejudicial material [has created] a reasonable likelihood that [...] a fair trial cannot be had.” Minn. R. Crim. Pro. 25.02, Subd. 3. “Prospective jurors ‘cannot be presumed partial solely on the ground of exposure to pretrial publicity,’ and ‘[t]he test is whether a prospective juror can set

aside his impression or opinion and render an impartial verdict.” Blom, 682 N.W.2d at 608 (quoting State v. Kinsky, 348 N.W.2d 319, 323 (Minn. 1984)).

Defendant also asserts that venue should be changed so as to provide a more diverse jury pool, better facilities, and to give Defense Counsel better access to Defendant and make it more convenient for Defense Counsel. Defendant offered no evidence indicating that Kandiyohi County lacks a diverse jury pool, and the Court has no reason to conclude that the diversity of the Kandiyohi County jury pool implicates Defendant’s right to a fair trial. Regarding facilities, as the Court noted in its prior Order, Kandiyohi County has facilities suitable for high-profile trials, which was one of the reasons this Court chose Kandiyohi County. Finally, regarding convenience for Defense Counsel and access to Defendant, the Court notes that Willmar is more than 60 miles closer than Marshall to the Twin Cities. The Court has tried to balance the convenience of all the interested parties, and while there is no place that is perfectly convenient to everyone, Kandiyohi County, in addition to having excellent facilities, is also reasonably convenient for all the parties interested in the case.

The Constitution and the case law require that Defendant be given a fair trial by an impartial jury. The Court will continue to vigilantly monitor the situation, but the record before the Court indicates that Kandiyohi County is the preferred location for the following reasons:

- a. It is sufficiently distant from Lyon County to provide the detachment necessary for a fair and impartial jury;
- b. It is close enough to allow those interested in the trial to conveniently attend;
- c. Kandiyohi County is willing to accept the change of venue;
- d. It is a facility with state-of-the-art security and high-profile trial experience.

Kandiyohi County fulfills all of these criteria. While other courthouses fulfill some of the criteria included in a-d, Kandiyohi County is the only one that fulfills all of these criteria.

AKP
7-7-88